

The Politics of Language in the Nation's Law – Between Bialik and Orwell

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Much has been, and will be, written about *what* the [Basic Law – Jewish Nation-State](#) (or the Nation's Law) does, but attention is also due to *how* it does what it does. The use of language in the Nation's Law is so troubling in its Sophist-like concealment of the meanings of the norms it encodes, that it creates, perhaps, injustice of the second order. Stated differently, the language usage conventions in the Nation's Law are normative actions in and of themselves, and examining these new norms is necessary for a full comprehension of this Law.

The Unreliability of Language

It seems apt to open a discussion on the Nation's Law use of language with Hayim Nahman Bialik, Israel's national Poet. In his seminal 1913 essay, [Revelment and Concealment in Language](#), Bialik laments not only the inherent instability of language, but our constant and futile hope to rely on language's alleged ability to represent something stable, and to communicate with others. Bialik insists that language cannot provide a stable support against the existential abyss inherent to the human condition, and reminds us that using it is only digging a deeper hole of vagueness and misrepresentations. Still, he uses language, because there is no other way, and he is puzzled by this dependence on something that is knowingly unreliable.

“What is there to Wonder at? – This: the feeling of security and the satisfaction that accrue to human beings when they speak, although they are really leading their thoughts and feelings beside the still waters and across the iron bridge of the Messiah, without their having any conception of how shaky is their bridge of mere words, how deep and dark their void is that opens at their feet, and how much every step taken safely partakes of the miracle. For it is clear that language with all its associations does not introduce us at all into the inner area, the essence of things, but that, on the contrary, language itself stands as a barrier before them.”

Despite this tragic failure of language, Bialik takes as an axiom that language users would seek the right language to represent their message accurately. Their choice of words and sentences will be careful and candid even when the message they want to communicate is false. Even if accurate words that represent the core of one's truth or message can never be found – the search after them he takes for granted, as a basic aspect of the human experience.

With any piece of legislation, it is hard to talk about the drafters' intention, for familiar reasons: they are not one drafter, there is constant political negotiation that often undermines the coherence of the final text, and even if there was one drafter who thought she had a clear intention in the choice of one phrasing over another, the post-structuralists would remind us that we should be suspicious of the notion that intention exists before its expression in language. Still, more than with other pieces of legislation, it is particularly hard to talk about the Nation's Law's drafters. The finalized text of this Basic Law is a mishmash product of many layers and competing versions that were put together and finalized hastily, as part of political pushes and pulls, producing a document that lacks the sense of cohesive style and harmonious comprehensiveness that are usually found in constitutional documents.

Notwithstanding the many drafters and multiple voices traceable in the text, the Nation's Law is consistent in its dishonest usage of language. Almost in every clause, the Law's language gives the impression that all we are reading are uplifting statements of merely symbolic and declaratory significance, expressing the deep and undisputable connections between the Jewish people to Israel's land. Almost every clause necessitates a savvy reader of legislation, familiar with the normative climate of Israel's constitutional law, to fully comprehend and uncover the actual meaning of the phrasings. Terms that sound profound and uplifting, aimed at unifying a nation around a document that finally puts into words its *ethos* as the nation-state of the Jewish people, turn out, after a closer reading, to be divisive rather than unifying; hurtful rather than protective; entrenched rather than open; bitter rather than celebratory; fearful rather than reassured; oppressor's words in a victim's gown.

Dishonest and Omissive Use of Language

Clause after clause, seemingly profound assertions, that move back and forth between a celebratory and a solemn tone, inscribe Israel as the historical homeland of the Jewish people, and lay out the practical implications of this connection. Clause after clause, what is written and stated conceals what is not written and unstated. Not written are the formal and symbolic powers and authority that this Law grants for limiting, silencing, and denying practices, individuals, communities, or speech that might not fall within the definitions of what Israel stands on and stands for, as the Nation's Law defines.

The profound and elevating assertion about the connection of Jews to Israel is made in article 1(b), anchoring this connection by a long taxonomy of origin of the right to self-determination. The right to self-definition of Jews in Israel is defined as a "natural, cultural, religious and historical" right. So long and inelegant is the list, that it may reveal an insecurity that each characteristic of this right would fail to stand on its own, hence the need to tighten the grip by encompassing all possible justifying frameworks, from man-made laws to metaphysical ones. What remains concealed, however, is the implications of anchoring the Jewish people's right to their homeland in terms such as religion and culture, new terms in the terrain of Israeli legislation. For example, if the right to self-determination is religious, this may well mean that it would be legitimate from now on to deny rights from those not subscribing to orthodox Judaism, whose monopoly has been governing marriage and divorce of

Jews in Israel, religious services, prayer practices in the Western Wall, conversion, and public schools' curriculum.

The “culture” anchor of the right to self-determination seems at first sight more soft and open-ended, perhaps allowing for alternative ways of imagining Jewish life in Israel. But both religion and culture were hasty additions to the legislative proposal just before the *Knesset* voted on the Law. Culture was thrown in, most likely, to compensate for the last minute omission of a separate clause giving every resident of Israel the right “to preserve their culture, education, heritage, language, and identity.” This clause was presented as protecting Arab citizens’ culture rights, but its broad phrasing makes it a likely basis for the majority’s rights as well. The culture clause was omitted due to vast criticism that in the name of everyone’s right to preserve their “culture, education, heritage, language, and identity,” it would grant almost unlimited permissions to discriminate women, Arabs, LGBTs, and other “othered” groups and limit their enjoyment of basic rights. For example, such a clause could authorize the Western Wall authorities to prevent transgender people from entering the site as their presence may contradict heritage or culture of the dominant orthodox community praying at the Wall, or, for that matter, it could permit any business owner from serving Arabs or same-sex couples. Similarly, such a clause might provide a normative anchor to institutionalized sex-based segregation and modest dress in public spaces, a [rampant phenomenon](#) in Israel today. Another illustration of the risk of such a clause is that it would entrench communities’ rights to absolute autonomy in their school curriculum, even when the curriculum denies children of core language and science skills, or is imbued with divisive and alienating accounts about minorities. As Prof. Gila Stopler noted in a brief about the harm of the culture clause, unlike the structure of *Basic Law: Human Dignity and Liberty*, the Nation’s Law does not contain a limitation clause that restricts the rights it enumerates through checks such as proportionality or due purpose, hence the protection on the rights in the Nation’s Law are potentially limitless, unless courts find ways to limit them through creative interpretations of the new normative climate that this Law creates.

The Nation’s Law’s propositions about the status of Arabic in Israel provides another example to its dishonest and convoluted speech. Article 4 declares that Hebrew is the State’s language. But then, immediately, Arabic is stipulated as a language that “has special status.” To readers not well-versed in the history of the status of Arabic in Israeli law, granting “special status” to Arabic may seem like a progressive recognition of the language and culture of 20% of Israel’s citizens and many more under its rule since 1967. In fact, the Nation’s Law demotes the status of Arabic rather than promotes it. Until this Law, Arabic was the second formal language of Israel, alongside Hebrew. But hey – its “special” now.

In a [radio debate](#) just days before the Law passed, Jewish Home MK Bezael Smotritch argued against the worries I expressed that the law might be used to further marginalize and exclude those outside the hegemony, that the left keeps crying wolf, and there was no reason for worry.

Language Becoming Practice

It took less than two months for my sober prediction to manifest vividly. The first court case that interprets and applies the Nation's law illustrates that the Law's dishonest celebratory language about the rights of the Jewish people serves to license parochialism and chauvinism. The judicial usage of the Nation's Law provides an alarming illustration of its dangers, so cynical and creative that I admit that had such legal scenario been presented to me hypothetically, even I would have thought it far-fetched.

In a [tort case](#) determining the damages due from *Hamas* to the plaintiff, who was wounded and emotionally traumatized in a 1998 Tel Aviv suicide bombing, Vice President Judge Moshe Drori of the Jerusalem's District Court uses the Law to increase the 4.4. million shekels in damages by one more million shekels, under the category of damage without need of proof. Judge Drori anchored his decision in yet another of the Law's seemingly harmless clause, a clause that seems to be merely restating the obvious commitment of Israel to its sons and daughters.

Article 6(a) posits: "The state shall foster the well-being of the Jewish people in trouble or in captivity due to the fact of their Jewishness or their citizenship."

As a basic law, explained Judge Drori, the Nation's Law's constitutional status merits interpreting it to fit the larger normative context in which it operates. He then proceeds to examine whether article 6(a) should apply to this case. That is, whether the Jewish people or Israel's citizens are in trouble because of the Defendant, *Hamas*. Examining the Hamas Treaty, Judge Drori finds that it specifically declares *Jihad* on the Jews, hence it is rightful to see Jews, let alone Jews in Israel, as "Jewish people in trouble ... due to the fact of their Jewishness or their citizenship" as article 6(a) describes. The State has indeed failed in protecting the physical and mental integrity of the plaintiff, but Article 6(a) enables offering an alternative remedy, i.e. maximum compensations for Jews harmed by their predators as Jews. The retroactivity of such interpretation of the new basic law on a terror attack occurring two decades ago, does not trouble Judge Drori, because under Israeli law, basic laws should also guide the interpretation of earlier legislation.

Similar interpretations of the law, that would not only protect Jews but oppress non-Jews as well as Jews outside the hegemony, are immanent. Article 7, declaring the State's commitment to developing Jewish settlement (not necessarily in the occupied territories) can be served to exclude non-Jews from equal access to accommodation, let alone to land zoning and development of Arab municipalities. Article 3, glorifying "a greater, united Jerusalem" as the capital of Israel, can serve to appropriate land in East Jerusalem as well as outside its current municipal borders, and even to authorize harsh steps against those whose speech supports dividing Jerusalem in a future peace pact. This formulation of the status of Jerusalem is indeed not new, and has already been inscribed, word for word, in 1980's *Basic Law: Jerusalem Capital of Israel*. By now, however, there are new normative foundations for silencing competing visions about the future of Jerusalem, as evident in other recent *Knesset*

laws, such as the laws dubbed the Anti-BDS Bill, the Nakba Law, and, most recently, the Loyalty in Culture Law.

The Nation's Law is not alone in its dishonest usage of language. Other recent or presently pending legislative proposals from coalition MKs use and abuse terms such as discrimination and accommodation in order to legalize exclusion and discrimination. One recent amendment to the bill forbidding discrimination in the goods and services sectors added a ban to discriminate clients and patrons based on their place of residence. On its face this is a worthwhile patch to add protection against unwarranted discrimination. But a closer review reveals that this is another miniscule legislative step towards full normative appropriation and legislative cohesion of the occupied territories: the ban against discrimination based on address was tailored to prevent business owners, say an electricity technician, from refusing to provide service in the settlements beyond the Green Line.

As a final example, a recent [proposal](#) to amend the Council of Higher Education Law wishes to authorize academic institutions to operate [sex-segregated programs](#) for any group who, "due to cultural reasons," "has limited access to higher education." In order to further camouflage the exclusionary and discriminatory effects of such proposal, it is entitled "Encouraging Access to Higher Education."

Emptying Words of Meaning

In George Orwell's Newspeak, "the word free still existed ... but it could only be used in such statements as 'This dog is free from lice'... It could not be used in its old sense of 'politically free' or 'intellectually free' since political and intellectual freedom no longer existed even as concepts, and were therefore of necessity nameless."

Unlike Orwell's 1984, in its incremental yet rapid and steady erosion of the State's democratic foundations, current Israeli legislation does use words and concepts that for Orwell's totalitarian regime may have seemed dangerous because of their potential to spark the imagination about a more just society, and then perhaps awaken rebellion. Freedom, accommodation, amelioration of discrimination, community, care, values, development, unity, openness, commitment, protection, or community, are words that are still used in current Israeli legislation, because they are *misused* and abused. The State is open, but only to immigration of Jews. It is committed to "preserve the affinity" between the State and the Jewish people in the Diaspora, but only to the extent that their Jewishness corresponds to the monolithic definition of Judaism, and serves *ad-hoc* interests of the country.

The prevalent ethics and tactics of language usage in the Israeli legislation today, in particular legislation defining the symbolic and physical borders of the nation, transcend the imagination of both Bialik and Orwell. Its opaque and dishonest use of language, its abuse of profound concepts and the refraining from stating the full distributive implications of rules that are presented as having only a bright side, renders such legislation incomprehensible to lay readers, and nearly maddening to those with legal training.

Most importantly, this new discursive practice seems to corrode the conditions for speaking meaningfully according to both Bialik and Orwell. Both of them, despite their complex and dark insights about language, imagined that despite the inherent openness in words' meaning, respect and aspiration to accurate speech is preserved, and commitment to their spirit is preserved. This is not so in the way language is exploited in the Nation's Law.

